

Resolution on Burden of Proof in Special Education
Approved at the April 24, 2012 Delegate Assembly

Whereas pursuant to the Supreme Court's Individuals with Disabilities Education Act (IDEA) decision, *Schaffer v. Weast*, 126 U.S. 49, 51 (2005), when an individualized education program (IEP) is disputed, the burden of proof is on the party disputing the IEP (the party "seeking relief"); and

Whereas this places the burden of proof almost exclusively on parents and legal guardians as a matter of practice; and

Whereas policy considerations and fairness necessitate placing the burden of proof on the school districts because (among other reasons) they: (a) have superior access to critical information; (b) employ the teachers and staff who will testify in IEP litigation; and (c) are "familiar with the full range of educational facilities" and how similarly situated children have fared at them (*Schaffer*, 126 U.S. at 64 (Ginsburg, J. dissenting)); and therefore, as a result, school districts are in a far better position to demonstrate their compliance with the IDEA than parents and legal guardians are to demonstrate a district's noncompliance; and

Whereas the state of Maryland may choose to place the burden of proof on its school districts, instead of on its parents and legal guardians; be it therefore

RESOLVED that the Montgomery County Council of Parent-Teacher Associations supports legislation placing the referenced burden of proof on the school districts; and be it further

RESOLVED that the Montgomery County Council of Parent-Teacher Associations urges Montgomery County Public Schools, the Montgomery County Delegation, and the State of Maryland, to support legislation placing the referenced burden of proof on the school districts.